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CMT USA, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOON PARK, an individual,

Plaintiff,

v.

CMT USA, INC., a North Carolina
corporation,

Defendant.

CV NO. 08 CV 0668 DMS (NLS)

**DEFENDANT CMT USA, INC.'S
EX PARTE APPLICATION TO CONTINUE
ENE CONFERENCE**

Judge: Hon. Dana M. Sabraw
Magistrate Judge: Hon. Nita L. Stormes

Complaint: April 14, 2008

I. INTRODUCTION.

Defendant and counterclaim plaintiff CMT USA, Inc. ("CMT") respectfully requests a four-week continuance of the Early Neutral Evaluation ("ENE") Conference from July 22, 2008 to August 19, 2008, or as soon thereafter as the Court is available. Plaintiff and counterclaim defendant Joon Park ("Park") does not oppose CMT's request. (*See* Declaration of Robert E. Colletti ("Colletti Decl."), ¶ 2.) CMT respectfully submits that extraordinary circumstances exist that justify a continuance of the ENE Conference:

(1) The costs involved in preparing for and having a representative of CMT with full settlement authority (who will be traveling from CMT's parent's corporate headquarters in Italy) and counsel attend the ENE Conference is comparable to any potential exposure in this case. As such, the parties have entered into settlement discussions and CMT believes a short continuance of the ENE Conference will allow the parties to determine whether resolving the litigation before the ENE Conference is possible; and

(2) Two related cases filed by Park involving the same patents are before this Court. CMT believes it will be most efficient to consolidate the cases for purposes of claim construction. As an ENE Conference has not yet been held in either of the other cases, a short continuance of the ENE Conference in this case will not delay the procedural schedule in any of the cases.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

Park filed this patent infringement lawsuit against CMT on April 14, 2008 alleging infringement of U.S. Patent Nos. 6,637,988 and 7,134,814. (D.I. 1). CMT filed its answer and counterclaims for non-infringement and invalidity on May 28, 2008. (D.I. 8).

On May 29, 2008, the Court scheduled an ENE Conference for July 22, 2008. (D.I. 10). In accordance with the May 29, 2008 Order and the Court's Local Rules, the parties held a Rule 26(f) Conference on July 1, 2008. (D.I. 10). During the Rule 26(f) Conference, the parties raised the issue of settlement and had discussions pursuant to Federal Rule of Evidence 408. Counsel for CMT informed Park's counsel that the economics of this case did not justify the expense of litigation. Mr. Park's counsel agreed to discuss the issue with his client and Park subsequently made a settlement offer. Although CMT has rejected the initial offer, the parties are still endeavoring to resolve this matter before having to incur expenses related to the ENE Conference.

Park has filed two other lawsuits alleging infringement of the same patents at issue in this case. Park filed an action against CAS Enterprises on February 29, 2008. (CV No. 08 CV 0385, D.I. 1.) The Court has scheduled an ENE Conference in that case for August 18, 2008. (CV No. 08 CV 0385, D.I. 11.) On April 14, 2008, Park filed an action against Penn State Industries. (CV No. 08 CV 0667, D.I. 1.) Based on CMT's review of the docket, it appears the Court has not yet

1 scheduled an ENE Conference in that case.

2 **III. CMT'S REQUEST FOR A SHORT CONTINUANCE OF THE ENE**
3 **CONFERENCE SHOULD BE GRANTED.**

4 **A. A Short Continuance Will Allow the Parties The Opportunity to Discuss a**
5 **Potential Settlement of This Case.**

6 CMT's representative with full settlement authority resides in Italy. (Colletti Decl., ¶ 3.)
7 CMT's principal counsel in this case is based in New York. Although CMT recognizes and
8 appreciates that "[i]n and of itself, having to travel a long distance to appear is not
9 'extraordinary'" (D.I. 10), CMT believes that the cost of preparing for and attending the ENE
10 Conference may outweigh any potential exposure in this case. The fact that Park does not sell a
11 competing product means he will only be entitled to reasonable royalty damages if Park proves
12 infringement and the patents are not found invalid. Since the cost of litigating this action against
13 CMT will far outweigh any potential damages award, the parties have discussed settlement in an
14 effort to resolve the matter before additional expenses are unnecessarily incurred.

15 The parties first discussed the issue of settlement during the July 1, 2008 Rule 26(f)
16 Conference. (Colletti Decl., ¶ 2.) Based on CMT's representations regarding its net sales, the
17 parties believe that a resolution through settlement would serve the economic interests of both
18 parties. An additional four weeks to explore settlement possibilities prior to the ENE Conference
19 will serve the interests of both parties and potentially conserve judicial resources.

20 **B. A Short Continuance of the ENE Conference Will Not Delay The Litigation.**

21 Mr. Park has filed two other lawsuits in this judicial district asserting infringement of the
22 same patents. The first case against CAS Industries was filed on February 29, 2008. (CV No. 08
23 CV 0385, D.I. 1.) An ENE Conference in that case is scheduled for August 18, 2008. (CV No.
24 08 CV 0385, D.I. 11.) The second case against Penn State Industries was filed on April 14, 2008.
25 (CV No. 08 CV 0667, D.I. 1.) Based on CMT's review of the docket in that case, an ENE
26 Conference has not yet been scheduled. During the Rule 26(f) conference between counsel for
27 CMT and Park, both parties agreed that consolidating the cases for claim construction purposes
28 would be most efficient for the Court and the parties. Since this case is further along than the

1 other cases, a short continuance of the ENE Conference should not delay the schedule in any of
2 the cases if a consolidated claim construction schedule is ordered by the Court.

3 **IV. CONCLUSION.**

4 For the foregoing reasons, CMT respectfully requests that the Court order a four-week
5 continuance of the ENE Conference.

7 Dated: July 11, 2008

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9 By: s/ Richard T. Mulloy

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CV NO. 08 CV 0668 DMS (NLS)

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700, San Diego, CA 92101-42907. I hereby certify that on July 11, 2008, I caused the following document(s) to be electronically filed with the Clerk of the Court and served on all parties to this action using the CM/ECF system:

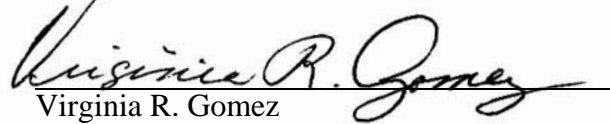
- **DEFENDANT CMT USA, INC'S *EX PARTE* APPLICATION TO CONTINUE ENE CONFERENCE;**
- **DECLARATION OF ROBERT E. COLLETTI IN SUPPORT OF DEFENDANT CMT USA'S *EX PARTE* APPLICATION TO CONTINUE ENE CONFERENCE**
- **[PROPOSED] ORDER GRANTING DEFENDANT CMT USA'S *EX PARTE* APPLICATION TO CONTINUE ENE CONFERENCE**

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☐ Via Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

6 I declare that I am employed in the office of a member of the Bar of or permitted to
7 practice before this Court at whose direction the service was made.

8 Executed on July 11, 2008, at San Diego, California.

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10 Virginia R. Gomez
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